IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 19TH MARCH 2007 / 28TH PHALGUNA 1928

Crl.Rev.Pet.No. 582 of 2000-B

CC.62/1996 of JUDL. MAGISTRATE OF FIRST CLASS COURT, PARAPPANANGADI

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REVN. PETITIONER:

T.P. AYSHA BEEVI, W/O. HAMSA(LATE)
KOORIYATTIL HOUSE,
V.K.PADI, MAMBURAM,
THIRURANGADI VIA. MALAPPURAM DIST.

BY ADV. SRI.BABU S. NAIR

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNKAULAM, KOCHI-31.

2. ZEENATH, D/O. ISMAIL, V.K.PADI, MAMBURAM, MALAPPURAM DIST.

3. ABDUL HAMEED, S/O. ISMAIL, V.K.PADI MALAPPURAM DIST.

R1 BY P[UBLIC PROSECUTOR MR. C.M.KAMMAPPU
BY ADV. SRI.DILIP MOHAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 19/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.R.P.NO.582 of 2000-B

DATED THIS THE 19th day of March 2007

ORDER

The revision petitioner is the de facto complainant in C.C.No.62/1996 with respect to the offence under Sections 448,323,355,324 read with Section 34 of the Indian Penal Code. The prosecution case is that the accused two in number, one of whom is a lady, trespassed into the house of the de facto complainant and voluntarily caused hurt by beating with hands, wooden stick and also by a chappal on her head and left hand.

2. The evidence adduced in the matter consisted of the testimony of PWs.1 to 8 and Exts.P1 to P4 and MO.1 chappal and MO.2 wooden stick. Exts.D1 and D2 are the contradictory portions of Section 161 Cr.P.C. statement of PW4. Ext.D3 is the copy of the decree in which PW4 was one of the defendants. It is the contention of the revision petitioner that the court below has grossly erred in appreciating the evidence and that the accused has been acquitted on absolutely wrong premises.

3. I find that the accused are close relatives being the daughter and son of the brother of her husband. The court below has relied on certain aspects of the evidence adduced to hold that the prosecution has failed to establish the guilt of the accused beyond reasonable doubt. It was noted that although the incident has taken place at 3.30 p.m., PW1 approached the doctor only at 8.15 p.m. The court has also noted that PW1 is a Panchayat member and hence the case that she waited for her brother to reach the hospital cannot be believed as such. It is also noted that PW4 is only independent witness, who was allegedly present at the spot. Exts.D1 and D2 are the contradictories in his version with Section 161 Cr.P.C. previous statement. The fact that he is the 4th defendant in the suit instituted by the father of the accused, Ext.D3 would indicate that he cannot be treated as a dis-interested person,the court has observed. It is noted that he has denied even the existence of such a civil case. It was also observed by the court below that Ext.P2 wound certificate would disclose that there are no corresponding injuries although allegedly beaten with stick on

her elbow. It is particularly mentioned that a person receiving a blow with a wooden stick like MO.2, definitely there will be some external injury. I find that the court below has considered the evidence adduced in the matter and was not convinced as to the prosecution allegations. It is settled of law that the revision at the instance of the de facto complainant can be entertained only sparingly and in case it stands established that the court below has not considered the evidence adduced in the matter or has not permitted the prosecution to adduce relevant evidence or has committed a serious procedural error etc. In the circumstances, I find no reason to set aside the order of the court below and remit the matter back to the court below. It has also to be noted that the incident has taken place in 1995. The revision petition is dismissed.

K.R.UDAYABHANU, JUDGE

ks.

K.R.UDAYABHANU, J

CRL.R.P.NO.582 of 2000-b

ORDER

19-3-2007